

**“Life Without Parole, Our Other Death Penalty:
Are Life-Sentenced Inmates a Danger to Others in Prison?”**

Oral Testimony

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Maryland Death Penalty Study Commission

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I am Dr. Robert Johnson, a professor in the Department of Justice, Law and Society at American University in Washington, D.C. I have been invited to testify today on the viability of life without parole as an alternative to the death penalty. Much of my testimony is drawn from a research article entitled "Life Without Parole, America's Other Death Penalty: Notes on Life Under Sentence of Death by Incarceration," which has been submitted to the Committee (see Johnson & McGunigall-Smith, 2008).

Life without parole is sometimes called a “true life sentence” because the offender is sentenced to spend the remainder of his or her life in prison. A better name for this sentence might be “death by incarceration” since these persons are, in effect, sentenced to die in prison. These inmates are often called “lifers” and that is the term used here to encompass life-without-parole prisoners as well as others serving terms so long they can expect to die in prison. For lifers, prison is both the locus of their daily lives and the setting in which their lives will end.

A possible objection to replacing death by execution with death by incarceration relates to public safety. After all, executed prisoners are dead; dead prisoners pose no threats, whereas lifers are at least potential dangers to others

in the prison. Some proponents of the death penalty warn us that lifers will feel that they have nothing to lose and will be uncontrollably violent, injuring or killing officers and inmates at will. In the absence of the death penalty, the speculation goes, what more can we do to deter them from violence?

As appealing as this scenario may seem, it is wrong. In fact, the opposite is true. A substantial body of empirical research supports the claim that lifers are less likely, sometimes much less likely, than the average inmate to break prison rules, including prison rules prohibiting violence (see Sorensen & Wrinkle, 1998; Johnson & Dobrzanska, 2005; Cunningham, Reidy & Sorensen, 2005; Cunningham, Reidy & Sorensen, 2008). These studies cover the Federal prison system as well as several state prison systems, including Missouri, Texas, Florida, Indiana, and Arizona. Findings uniformly bear out the conclusion that lifers and other long-termers typically are not a danger to others in the prisons in which they reside. Note that these studies examined more than 60,000 prisoners, over 3,000 of them serving sentences of life without parole.

A study that conveys the substance of this body of work was conducted in Missouri and covered an 11 year period. For our purposes, the populations under study included inmates serving sentences of life without parole for first degree murder (N=1,054) and inmates serving parole-eligible sentences (N=2,199). All inmates were housed in maximum security, the level just below "super max" prisons. Lifers were significantly less likely than parole eligible inmates to be involved in violent misconduct (Cunningham, et. al.2005: 313-314). Only one of the 1,054 life-without-parole prisoners killed in prison. Lifers were half as likely as parole-eligible prisoners to commit acts of violence, and fully four times less likely than parole-eligible prisoners to commit major assaults. Prisons can be dangerous places, but as a general rule it is not the lifers that others have to fear.

Life sentence inmates typically are manageable prisoners, some are even model prisoners, but their effective adjustment to prison life does not change the fact that their lives are marked by suffering and privation. Lifers do not adjust well because prison life is easy; they adjust well because self-interest moves them to make the most of a very difficult situation. Prison is their involuntary home for life. They strive to make the most of the limited life that is available to them behind bars.

In particular, self-interest drives lifers to avoid trouble because trouble jeopardizes the few privileges they can secure in the prison world. Prison privileges include such things as: a stable assignment to a particular cell the prisoner can call his house; a job; a program of study; a 13" television (paid for by the prisoner) to fill empty hours in the cell; and regular access to the yard for exercise and fresh air. If prisoners break the rules, any and all of these privileges can be revoked and they can find themselves in what amounts to solitary confinement. In the "hole," as solitary is sometimes called, prisoners live more like caged animals than human beings. A lifetime of this sort of punishment is almost unthinkable, which is one reason lifers go great lengths to stay out of trouble and avoid this grim fate.

The life of the lifer is a repetitive, bleak, and lonely existence, and that is on the good days. A life confined to prison is not so much a physical punishment – prisoners are given food and shelter – as it is an existential nightmare of meaningless days and nights without end. The lifer faces a lifetime of boredom, doubt, and anxiety punctuated by piercing moments of insight into his or her failings as a human being. As one inmate observed, "my life is ruined for life; there is no redemption, and to some that is a fate worse than death" (Johnson & McGunigall-Smith, 2008:344). Note that fully ten percent of the prisoners we have executed since the return of the death penalty in 1976 – 123 prisoners in all – gave up their appeals and "volunteered" to be put to death rather than submit to a life of prison (see Johnson & McGunigall-Smith, 2008:333).

For those few lifers who turn to violence, secure systems of custodial segregation can be deployed to control them. In Maryland, there are two high-security or 'Supermax' prisons: the Maryland Correctional Adjustment Center (MCAC) and North Branch Correctional Institution (North Branch). These 'Supermax' prisons, as I have seen first hand, have one or more internal regimes or levels of custody that closely approximate solitary confinement and can be thought of as the modern equivalent of dungeons. Significantly, MCAC is nicknamed 'the cave,' which captures the primitive quality of life in this institution.

In these highly restrictive regimes, inmates are: (1) confined alone in their cells for twenty-three or more hours a day; (2) denied radio and television and given limited access to reading materials (which can be revoked as a result of poor behavior); (3) kept under heavy guard whenever they are removed from their cells and, when so moved, constrained by handcuffs and leg irons and sometimes a "three-piece" shackling arrangement in which hands, arms and legs are restrained; (4) eat all meals alone in their cells, in close proximity to their toilets; and (5) recreate alone on the pod or in an outdoor cage while held in full restraints. Supermax prisons like these were built for inmates who commit serious violence in prison. Officials at these facilities in the Maryland Department of Corrections maintain that vigilance and adherence to policy and procedure allow them to contain and constrain any prisoner.

Lapses in security are of course possible and do happen on occasion, sometimes with tragic results, particularly if there are staff shortages and deficiencies in training and supervision. But lapses in security are a risk on death row as well as in other prison settings. It is wise to remember that condemned prisoners often live on death row for years, sometimes decades. Any failures of the system are apt to apply not only to lifers but to condemned prisoners as well. We can not escape the shortcomings of our prison systems by executing a few offenders.

Does Maryland need the death penalty to ensure that its prisons are safe? The simple answer is no. There are ways to keep Maryland prisons safe without the threat of the death penalty, a threat that clearly has not deterred the recent killings in Maryland prisons. In fact, Maryland prisons have a comparatively high homicide rate, which the death penalty has done nothing to prevent.

One way to reduce prison violence is to invest in prison staff. A prison that is adequately staffed with well-trained personnel is likely to be a secure prison. Security is the first obligation of staff, and well-trained staff members have the confidence and competence to assert themselves and maintain order. An orderly prison, in turn, is a setting in which prisoners and officers can feel secure because they are reasonably safe. In such a prison, inmates are less likely to resort to violence because they know the officers are in control (Conover, 2000; Johnson, 2002).

If Maryland were to abolish the death penalty, today's condemned prisoners would be removed from death row and placed among regular maximum-security prisoners. This should not be a problem. There is an extensive body of research indicating that former condemned prisoners, like lifers, demonstrate low rates of serious violence in the general prison population and can be readily managed in regular prison environments (Marquart & Sorensen, 1989; Marquart, Ekland-Olson, and Sorensen, 1989; Reidy, Cunningham, & Sorensen, 2001; Sorensen & Cunningham, forthcoming).

Thank you for allowing me to provide testimony. I would be pleased to answer questions you might have.

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